RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक ३४] गुरुवार ते बुधवार, नोव्हेंबर ६-१२, २०१४/कार्तिक १५-२१, शके १९३६ [पृष्ठे २०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील
(भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त)
अधिसूचना, आदेश व निवाडे.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) Nos. 13 and 18 OF 1999.—(1) Shetkari Sahakari Bank Ltd. Sangli, Market Yard, through its Managing Director, (2) Shri B. R. Tawase, Managing Director, Shetkari Sahakari Bank Ltd., Sangli, (3) Shri R. G. Mane, Branch Manager, C/o. Shetkari Sahakari Bank Ltd., Sangli.—*Petitioners* (Opponents of Revision (ULP) No. 18/99)—*Versus*–Ranjit Shivling Mali, Ramnarayan Apartment, Old Kupwad Road, Shinde Mala, Sangli.—*Respondent* (Petitioner of Revision (ULP) No.18/99).

In the matter of Revision under section 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Appearances.—Shri K. D. Shinde, Advocate for the Petitioners.

Shri M. G. Pathan, Advocate for the Respondent.

Judgment

These Revisions are arising out of Judgment and order passed in Complaint (ULP) No. 4/94 by Labour Court, Sangli, whereby an employer-Bank is directed to reinstate its employee with continuity of service but without back wages holding that punishment of dismissal for proved misconduct of misappropriation is shockingly disproportionate.

2. Revision Application (ULP) No. 18/99 is filed by the employee-original Complainant challenging the entire decision whereas Revision Application (ULP) No. 13/99 by the Bank to the extent of reinstatement.

3. Admittedly, the Complainant joined the Bank as a clerk and was transferred from 9th September 1981 with Bank's Nandre Branch on the post of Agent. Thereafter, one Shri Mane (Original Respondent No. 3) was appointed as Agent at Nandre Branch and the Complainant was entrusted with the work of Sub-Accountant. One Shri A. K. Jadhav (now deceased) was working as a clerk whereas Shri Ramchandra Ganpat Sangavkar as Cash-clerk with the Complainant and Agent Shri Mane. The Bank served joint chargesheet dated 6th April 1993 upon the Complainant and Shri Jadhav alleging that they, in collusion with each other, took out blank signed cheque

from the cupboard of Agent Shri Mane, wrote amount of Rs. 5,700 on the same, illegally withdraw said amount through said cheque and used it for their personal purposes. Simultaneously, both were suspended pending the enquiry. Shri Jadhav expired on 5th May 1993. Eventually, revised chargesheet dated 10th June 1993 was served upon the Complainant. The Enquiry Officer held the Complainant guilty of the charges. Finally, the Complainant was dismissed from service with effect from 13th December 1993.

4. Above complaint was filed on 10th January 1994 against the Bank, its Managing Director and Branch Manager Shri Mane alleging unfair labour practices under items 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act. It was alleged by the Complainant that he was working as Agent at Nandre Branch but then started working as Sub-Accountant after appointment of Shri Mane as Agent. In fact, he (the Complainant) was extra competent and had more experience and hence Shri Mane was cautious while issuing direction to him in day to day working of the Branch. On the contrary, Shri Mane was negligent and was warned by the Head Office. As such, Shri Mane had grudge against him. It is further alleged that a force of enquiry was made by issuing a false and fabricated chargesheet. He has not committed any misconduct but was made scape-goat. The enquiry is contrary to the principles of natural justice and findings of the Enquiry Officer are totally perverse. Besides, he was not delivered copy of the enquiry report while imposing punishment of dismissal. Finally, the Complainant prayed for reinstatement with continuity of service and full back wages.

5. The Complainant also made interim application (Exh. U-2) under section 30(*2*) of the M.R.T.U. and P.U.L.P. Act to direct the Bank to temporary reinstate him, till decision of main complaint. The Bank objected *vide* reply (Exh. C-1) and justified its action. The Labour Court then rejected the interim application by order dated 30th March 1994.

6. The Complainant then amended the complaint on 21st April 1995 contending that Agent Shri Mane sent a false report in December, 1992 to the Head Officer without verifying details thereof at the Branch. It was detected when Inspection Branch visited the Branch on 29th January 1993 and then a Memo was issued to Shri Mane. It is then alleged that Shri Mane then developed a grudge against him, decided to falsely implicate him in some misconduct and then issued a false memo dated 2nd February 1993 to him. It is further alleged that Shri Mane assured the Complainant that he will be absolved from the Memo but should give a statement admitting the misappropriation and further assured that admission of the misconduct will be inconsequential. According to the Complainant, therefore, the enquiry and the dismissal is outcome of conspiracy by Bank's Managing Director and Branch Agent Shri Mane.

7. Bank's Managing Director filed written statement at Exh. C-1 contending that the Complainant illegally took out blank signed cheque from cupboard of Agent Shri Mane, made Shri Jadhav to write figure of Rs. 5,700 on it and withdraw the amount from account of Shri M. N. Joshi, in collusion with each other. On enquiry, the Complainant and Shri Jadhav admitted the misconduct and deposited misappropriated amount in the Bank. Thereafter, a joint chargesheet was served upon them. However, Shri Jadhav expired and then revised chargesheet was served upon the Complainant. Sufficient opportunity was given to the Complainant in the enquiry and findings of the enquiry Officer are well justifiable. Copy of Enquiry Report was enclosed alongwith dismissal order. The Managing Director finally prayed for dismissal of the complaint.

8. Considering rival pleadings, the labour Court framed issues and parties went to the trial. The Labour Court held *vide* order dated 8th December 1998 that the Enquiry is fair and proper. Then the trial proceeded further. The Complainant examined himself at Exh. U-21 and produced many of the enquiry papers. The Bank did not lead oral evidence but produced entire enquiry papers alongwith statements of the Complainant admitting the misappropriation.

9. Learned Labour Court, on perusal of evidence and hearing both parties, observed that the Complainant admitted his guilt by statements dated 9th February 1993 and 22nd February 1993 and those are proved in the enquiry. Then, it further observed that there is no reason for

Shri Mane the Agent and Shri Sangavkar the cash-clerk to state falsely against the Complainant. It then held that findings of the Enquiry Officer are justifiable. As regards punishment, learned Labour Court observed that Complainant's past service-record is good but the same is now here considered at all. It then relied upon decision of Apex Court in *Colour Chem Ltd.* V/s. *A. S. Alaspurkar reported in 1998 (I) Mah. L. R. at page 685* and held that punishment of dismissal is shockingly disproportionate. It then observed that the Complainant has to opt either for back wages or reinstatement. It then held that denial of back wages will be a proper punishment. Finally, it allowed the complaint, as above, on 25th January 1999. The same is challenged in these Revision.

10. I heard both Advocates at length. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned finding that findings of Labour Court that charges are proved against the complainant, is legal and proper ?

(*ii*) Whether impugned finding of Labour Court that punishment of dismissal is shockingly disproportionate, is legal and proper ?

(*iii*) What order ?

11. My findings on above points, are as under :—

(*i*) Yes.

(*ii*) No.

(*iii*) The Revision Application (ULP) No. 13/99 is allowed whereas Revision (ULP) No. 18/99 is dismissed.

Reasons

12. To appreciate rival contentions, admitted facts need to be referred. One Shri Halingale had Current Account with Nandre Branch. He served notice dated 3rd July 1992 upon the Bank that amount of Rs. 2,470 in respect of Sugar cane supplied by him to Tasgaon Sugar Factory is not credited to his Account and the same is misappropriated. One Shri M. N. Joshi had also Current Account with Nandre Branch. Agent Shri Mane suspected that amount of Shri Halingale is withdrawn by Shri Joshi. He then enquired with Shri Joshi who delivered a blank signed cheque to the Agent with the instructions to withdraw amount of Shri Helingale, if due, from his Account. As such, blank cheque signed by Shri Joshi was in the cupboard of Agent Shri Mane. It is also an admitted position that Shri Jadhav (Clerk) himself wrote a figure of Rs. 5,700 withdraw said amount from Shri Joshi's Account on 23rd October 1992 and immediately deposited the same in his own Account with said branch. Thereafter, Shri Joshi issued notice dated 2nd February 1993 that amount of Rs. 5,700 is misappropriated from his Account through the cheque, handed over by him to Shri Mane for withdrawal of Rs. 2,500 in case, the same is due to Shri Helingale.

13. It has further come on the record that the Complainant gave a statement on 9th February 1993 that he erased endorsement on Current Account of Shri Joshi, made by Shri Mane, that no amount should be permitted to be withdrawn from the Account, withdraw Rs. 5,700 from Joshi's Account through Clerk Shri Jadhav and is willing to deposit said amount. Thereafter the Complainant and Shri Jadhav made an application on 22nd February 1993 stating that Rs. 5,700 were withdrawn by them through Blank signed cheque issued by Shri Joshi, they are willing to deposit said amount and they be permitted to deposit the same.

14. Shri Pathan, learned Advocate representing the Complainant vehemently argued that bank's Head Office issued a memo to Agent Shri Mane for furnishing false summary of December, 1992 without verifying the record and Inspection Team recorded statement of the Complainant on 29th January 1993 regarding the same. As such, Shri Mane had grudge against the Complainant. Shri Mane checked Scroll Register of 24th October 1992 and was aware that Rs. 5,700 are withdrawn from the Account of Shri Joshi. However, Shri Joshi issued a notice and thereafter Shri Mane decided to falsely implicate the Complainant. There is no satisfying evidence before the Enquiry

Officer to show that endorsement of Shri Joshi's Account was erased by the Complainant. In fact, the amount was withdrawn by Clerk Shri Jadhav and the Complainant is made scape goat. There is no satisfying evidence before the Enquiry Officer to establish that the Complainant took out blank cheque from steel cupboard of Agent Shri Mane. As such, findings of the Enquiry Officer are clearly perverse. He further explained that the application seeking permission to deposit alleged misappropriated amount and the statement are obtained from the Complainant by way of coercion. The Complainant was assured that the application and the statement will be in consequintial and hence those cannot be substituted for proving alleged misconduct. He further submitted that entrustment of the cheque to the Complainant is not at all proved before the Enquiry Officer. Hence suspician cannot be allowed to take place of proof, even in domestic enquiries. However, the Labour Court has cursorily held that the charges are proved. He then submitted that this Court can review the evidence under section 44 of the M.R.T.U. and P.U.L.P. Act. He relied upon decision in *Vikas Textiles* V/s. *Sarva Shramik Sangh reported in 1990 (60) FLR at page 630 (Bom. H. C.).*

15. Shri Shinde, learned Advocate representing the Bank Countered above arguments and replied that evidence cannot be re-appreciated in a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act. Agent Shri Mane was not present in the Branch at the relevant time the Complainant was aware of the same and then illegally took out said cheque from Agent's Steel Cupboard. There was endorsement on Current Account of Shri Joshi that the amount should not be paid without permission of the Agent, however, the same was erased by the Complainant. Cash-clerk Shri Sangavkar has stated that the amount was withdrawn by Clerk Shri Jadhav. However, the Complainant alone had access to the blank cheque. In addition, the Complainant has admitted twice regarding his guilt. As such, the charges are proved.

16. The Complainant has examined himself at Exh. U-21 before the Labour Court. He has no-where deposed regarding alleged plea of obtaining his statements under coercion. It is evident to note that the Complaint when presented on 10th January 1994, was totally silent regardng Complainant's submission and statement admitting the guilt.

17. The Bank filed say at Exh. C-1 to the interim application stating about statements of the Complainant dated 9th February 1993 and 22nd February 1993 and produced them on record on 10th January 1994. Thereafter, the Complainant made an application for amendment of the complaint on 19th December 1994 and raised plea that his statements were obtained with false assurances. It cannot be ignored that it was the Complainant alone who had access to the blank signed cheque and was aware of the claim of Shri Halingale and issuance of blank cheque by Shri Joshi to meet the amount, if any, payable to Shri Halingale. It is defence of the Complainant in the enquiry that amount was withdrawn by Shri Joshi himself and he (the Complainant) simply passed the cheque and that too after permission of Shri Mane. Advocate Pathan submitted that Shri Joshi is not made available for cross-examination. In my Judgment, it is nowhere disputed by the Complainant that Shri Joshi issued notice alleging misappropriation of Rs. 5,700 from his Account with the help of blank cheque. There is no reason for Shri Joshi to issue a false notice. On the contrary, his *bona-fides* are reflected by delivery of blank cheque to Agent Shri Mane to pay the amount, if any, payable to Shri Halingale. The Bank has examined its Managing Director Shri Tawase, Agent Shri Mane and Cash-clerk Shri Sangavkar in the enquiry. Agent Shri Mane has stated that he had kept blank signed cheque in his steel cupboard and all staff members were present when Shri Joshi delivered the same to him. He was out of the premises on 23rd October 1992 and there was practice to keep charge of his post with the Complainant in his absence. Nothing material came out in his cross-examination to shatter or dislodge his version. He denied that he himself cancelled the endorsement on account of Shri Joshi. In such circumstances, it can be well accepted that the Complainant had access to steel cupboard of Agent Shri Mane. It also needs to be apraised that entire investigation commenced after receipt of notice of Shri Joshi. In addition, acceptance of guilt by the Complainant speaks voluminously and proves the misconduct.

18. It needs to be clarified that strict and sophisticated rules of evidence under Indian Evidence Act do not apply in a domestic enquiry and all material which are logical probative for a prudent mind are permissible. Such observations are made by Hon'ble Apex Court in *State of Hariyana* V/s. *Ratan Sing reported in 1977 Lab. I. C. at page 845.* It also cannot be ignored that the Complainant is a responsible office of the Bank and will not sign or give in voluntary statement admitting the guilt. His plea of obtaining his statement and the applications appear to be after thought for the obvious reason that there were no pleadings about the same while filling the complaint. Pleadings thereof were incorporated by way of amendment and that too after production of his statements and joint application in the Court by the Bank. Besides, Bank's Managing Director is examined in the enquiry to prove statement and application of the Complainant. There was no reason for him to state falsely against the Complainant. It cannot be accepted that there was collusion between him and Agent Shri Mane. In such circumstances, findings of the Enquiry Officer cannot be said to be perverse. I, therefore, hold that learned Labour Court has rightly held that charges are proved against the Complainant. Accordingly, I answer Point No. 1 in the affirmative.

19. Now, turning to the punishment, Shri Shinde learned Advocate representing the Bank submitted that the Labour Court has wrongly relied on Colour Chem's decision. In that case, the employees were slipping while on duty and it is observed that punishment of dismissal for minor or technical misconduct is shockingly disproportionate. Banking is a service-industry wherein absolute devotion, integrity and honesty needs to be maintained so as to gain and continue confidence amongst the depositors and public. Misappropriation cannot be held to be a minor misconduct and hence punishment of dismissal was legal and proper. He relied on the decision of Hon'ble Apex Court in *Janta Bazar* V/s. *Secretary* reported in *2000 II CLR at page 568.* He then submitted that the Labour Court extended misplaced sympathy by directing reinstatement without back wages.

20. Advocate, Shri Pathan replied that Complainant's past record is no where considered while imposing punishment and it amounts to legal victimisation. Besides, clerk Shri Jadhav has played material role of withdrawing the amount and there is no evidence regarding its utilisation by the Complainant.

21. It has to be borned in mind that the Bank is a service industry and confidence of the public/depositers is its back bone. Absolute devotion deligence, integrity and honesty needs to be preserved by every bank employee and especially, the Bank Officers. Otherwise, confidence or faith of the public/depositors would certainly be impaired. The Complainant was working as a Sub-Accountant, was well aware of his responsibility, especially in the absence of the Agent. However, he himself took out said cheque, made Clerk Shri Jadhav to write figure of Rs. 5,700 on it and withdrew the same from account of Shri Joshi. As such, he was equally responsible in misappropriating the amount from Account of Shri Joshi. Its not a minor or technical misconduct. As such, observations in Colour Chem's decision are inapplicable. It is observed in Janta Bazar *V/s* Secretary (referred above) that once act of misappropriation is proved, may be for large or small amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Consequently, punishment of dismissal cannot be said to be shockingly disproportionate. Proved misconduct is grave and serious. The Complainant was holding post of trust and confidence. With such background his reinstatement will amount to misplaced sympathy which is totally uncalled for as held by Hon'ble Apex Court in Janta Bazar's case. Consequently, consideration of past record is immaterial. I, therefore hold that reasons accorded by the Labour Court for commuting the punishment are unsustainable in law. On the contrary, it extended misplaced sympathy which is an error apparent on the face of the record. Accordingly, I answer Point No. 2 in the negative.

22. To summaries, finding of the labour Court that charges are proved against the Complainant, is legal and proper. However, it extended misplaced sympathy to the Complainant though was found guilty of the misappropriation. As such, order commuting the punishment needs to be set aside by allowing Bank's Revision and dismissing of the Complainant.

23. To conclude, I pass the following order :—

Order

(*i*) Revision Application (ULP) No. 13/99 is allowed.

(*ii*) Impugned order directing reinstatement with continuity of service but without back wages is set aside and original complaint is dismissed.

(*iii*) Revision Application (ULP) No. 18/99 is dismissed.

(*iv*) A copy of this Judgment be kept in other Revision Application.

(*v*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 10th July 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 34 OF 2001.—Divisional Traffic Superintendent, Maharashtra State Road Transport Corporation, Sindhudurg Division, Kankavali, Dist. Sindhudurg.—*Petitioner—Versus*—Shri Sandesh Ganpat Hadkar, At Post Kolam, Tal. Malvan, Dist. Sindhudurg.—*Respondent.*

In the matter of Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Appearances.– Shri M. G. Badadare, Advocate for the Petitioner.

Shri S. C. Patil, Advocate for the Respondent.

Judgment

This is Revision by Original Respondent Maharashtra State Road Transport Corporation challenging legality of Judgment and order passed in Complaint (ULP) No. 218/91 by Labour Court, Kolhapur, whereby the Corporation is directed to reinstate its driver original Complainant with liberty to award lesser punishment than of the dismissal holding that punishment of dismissal for proved misconduct is an unfair labour practice under the M.R.T.U. and P.U.L.P. Act.

2. Admittedly, present Respondent Original Complainant was in employment of the Corporation as a driver from 2nd June 1988. He was on duty on 1st December 1989 on Bhagwantgad-Malvan route. The Corporation served chargesheet dated 9th December, 1989 upon him for misconducts under clauses 10, 11, 15, 22 and 29(*a*) of its Discipline and Appeal Procedure alleging that he permitted one Shri Talgaonkar to drive the bus who caused the accident by reckless driving but made a false statement that he has caused the accident. The Complainant denied the charges. Then an enquiry took place. The Enquiry Officer held that all charges are proved. Ultimately, the Complainant was dismissed on 8th August 1991.

3. It is case of the Complainant that he was on duty on 1st December 1989. Boiled water from the radiator sprung on his hand resulting into blisters. As a result, he was unable to hold the steering and drive the bus. It is alleged that, to overcome inconvenience to the passengers, he permitted another person Shri Talgaonkar to drive the vehicle. A cyclist came from opposite side. Shri Talgaonkar was required to take the bus to extreme left to save the cyclist and caused the accident. There was marginal damage to the bus and there were superficial injuries to two passengers. His past record is good and punishment of dismissal is an unfair labour practice. Finally, the Complainant prayed for reinstatement with continuity of service and full back wages.

4. The Complainant also made an application (Exh. U-2) for interim relief whereon, the labour Court directed the Corporation to allow the Complainant to join duties till further orders, with show cause notice. The Corporation then allowed the Complainant to join duties.

5. The Corporation filed its say *cum* written statement at Exh. 11 contending that the Complainant allowed the third person to drive the vehicle at the risk of lives of the passengers who caused accident and, therefore, punishment for proved misconduct is proper. According to the Corporation, the misconduct is neither minor nor technical and it has not engaged in an unfair labour practice. Finally, the Corporation prayed for dismissal of interim application as well as the complaint.

6. Considering rival pleadings, learned labour Court framed issues at Exh. 14 and the parties went to the trial. None of the parties led oral evidence. The Corporation produced entire enquiry papers alongwith Complainant's past record.

7. Learned Labour Court, on perusal of evidence and hearing both parties, held that the enquiry is fair and proper and findings of the enquiry officer are well justifiable. It then observed that Complainant's future record after temporary reinstatement is good and he was unable to drive the bus on account of blister injuries to his hand. It further observed that the Complainant has reformed himself after the interim order and, in such circumstances, punishment of dismissal is an unfair labour practice. Ultimately, it allowed the complaint on 2nd March 2001 directing reinstatement with continuity of service but without back wages with liberty to the Corporation to impose lesser punishment. Said decision is challenged in this Revision.

8. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned decision directing reinstatement with continuity of service, with liberty to the Corporation to award any lesser punishment, is justifiable ?

(*ii*) What order ?

9. My findings on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

10. The facts, arising out of rival pleadings, are no longer in dispute. Admittedly, the Complainant was on duty, permitted third person to drive the vehicle who caused an accident and it resulted into damage of Rs. 400 to the S. T. Bus and injuries to two passengers. It has come on the record that the Complainant is dismissed with effect from 22nd June 1995 on account of driving S. T. Bus by over-speed. Both Advocates submitted that the Complainant has filed a complaint before Labour Court, Kolhapur regarding said dismissal and the same is pending.

11. Shri Badadare, learned Advocate representing the Corporation argued that plea of blister injuries due to springing of boiling water of the radiator is totally after thought. In fact, the Complainant did not care lives of the passengers and unauthorisedly permitted the third person to drive the vehicles. Its a serious misconduct. But the Labour Court extended misplaced sympathy. As a result, the Complainant caused another accident and was required to be dismissed.

12. Shri Patil, learned Advocate representing the Complainant replied that the Complainant has explained in the spot statement itself regarding his inability to hold the steering due to injuries and permitted the third person to drive the vehicle so as to prevent inconvenience. It was his *bona fide* mistake but supported by good faith. Therefore, learned labour Court rightly granted reinstatement with liberty to award other lesser punishment. He then added that later dismissal is subject matter of another Complainant and cannot be capitalised by the Corporation.

13. The Complainant has stated all facts in his spot statement. The same is relied by the Corporation in his enquiry. As such, the Corporation is estopped from contending that contents thereof are after thought. On the contrary, Shri Talgaonkar has stated in his spot statement regarding injuries to the Complainant. As such, learned Labour Court, has rightly accepted Complainant's explanation. Complainants's past record was good at that time. Therefore, learned Labour Court has rightly held that an opportunity to improve himself has to be extended to the Complainant and punishment of dismissal is an unfair labour practice. Besides, the Complainant has physically worked as per the interim order till the later dismissal. In such circumstances, it cannot be accepted that impugned decision spells of arbitrariness or perversity warranting revisional interference. Complainant's later dismissal is subject matter of the complaint pending before the labour Court and no observations can be made regarding merits thereof. I, therefore, hold that impugned decision is justifiable. Accordingly, I answer Point No. 1 in affirmative and pass the following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 17th July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 70 OF 2001.—(1) Zilla Parishad, Kolhapur, Nagala Park, Kolhapur, Through its Chief Executive Officer, (2) Zilla Parishad, Kolhapur, through is Executive Engineer, (Construction), (3) Zilla Parishad, Kolhapur, Through its Deputy Engineer, (Construction), Panchayat Samiti, Ajara, Dist. Kolhapur.—*Petitioners—Versus*—Shri Maruti Kushapa Ghevade, At Mendholi, Tal. Ajara, District-Kolhapur—*Respondent.*

In the matter of Revision u/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Appearances.— Shri A. T. Upadhye, Advocate for the Petitioners.

Shri S. A. Desai, Advocate for the Respondent.

Judgment

This is a Revision by original Respondents Zilla Parishad challenging legality of Judgment and order passed in Complaint (ULP) No. 337/1992 by Labour Court, Kolhapur, whereby they are directed to reinstate original Complainant with continuity of service and 40% back wages.

2. Present Respondent (hereinafter referred to as the Complainant) filed above complaint on 14th September 1992 against present Petitioner (hereinafter referred to as the Zilla Parishad) alleging unfair labour practices under item 1 (*a*), (*b*), (*d*) and (*f*) of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, *inter alia* contending that he started working under Deputy Engineer of Panchayat Samiti (Original Respondent No. 3) as a Road-coolie from the year 1980 but was orally terminated on 26th June 1991. It is them contended that ample work is available and his junior employees namely Shri Patil, Narake, Bhuimbar and Narvekar are retained. It is then alleged that his termination in violation of mandatory provisions under sections 25-F and 25-G of the Industrial Dispute Act. Finally, he prayed for reinstatement with continuity of service and full back wages.

3. The Zilla Parishad contested the complaint, *vide* written statement (Exh. C-12), contending that the Complainant was employed as and when work was available, never put continuous service of 240 days in a year and hence is not entitled to protection or benefits of the Industrial Dispute Act. In addition, now no work is available and his services came to be dis-continued as per directions of the Government. The Zilla Parishad then prayed for dismissal of the complaint.

4. Considering rival pleading, the Labour Court framed issued at Exh. 15 and the parties went to the trial. The Complainant examined himself at Exh. U-16 whereas the Zilla Parishad its Deputy Engineer Shri Chougule at Exh. C-19. In addition, both parties produced documentary evidence.

5. Learned Labour Court on perusal of evidence and hearing both parties, held that the Deputy Engineer has admitted in the cross-examination that the Complainant has put continuous service of 240 days in preceding 12 months of his termination and, therefore, the termination without complying provisions of section 25-F of the Industrial Dispute Act is an unfair labour practice. It then found that the Complainant was not in gainful employment, however, granted 40% of back wages while directing reinstatement with continuity of service. Finally, it allowed the complaint partly on 6th October 2001. Said decision is challenged in this Revision Application.

6. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned finding that Complainant's termination is in violation of provisions of section 25-F of the Industrial Dispute Act, is legal and proper ?

(*ii*) Whether impugned order directing reinstatement with continuity of service and 40% back wages warrants interference ?

(*iii*) What order ?

7. My findings on above points, are as under .—

(*i*) Yes,

(*ii*) No,

(*iii*) The Revision Application is dismissed.

Reasons

8. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise rival pleadings meticulously. The only material question is whether the documents on record are in capable of supporting impugned Judgment. In other words, whether impugned order is perverse or justifiable ?

9. Shri Upadhye, learned Advocate representing the Zilla Parishad argued that the Complainant was engaged as and when work was available on daily wages basis and is not entitled to protection of section 25-F of the Industrial Dispute Act.

10. Shri Desai, learned Advocate representing the Complainant replied that the Complainant has put continuous service of more than 240 days in preceding 12 months of his termination and, therefore, ought to have paid retrenchment compensation. The Zilla Parishad is covered by provisions of Industrial Dispute Act. As such, the Labour Court has rightly held the termination to be an unfair labour practice.

11. I must state that the Zilla Parishad has not come with a case that the Complainant was employed for specific purpose and periods and his case is covered under section 2(*oo*) (*bb*) of the Industrial Dispute Act. On the contrary, it has denied that the Complainant has put continuous service of 240 days. Its Deputy Engineer has categorically admitted continuous service of 240 days by the Complainant. It is case of the Zilla Parishad that the Complainant is covered by Kalelkar Award but is not entitled to benefits thereof. Section 25-F of the Industrial Dispute Act does not distinguish between temporary and permanent employees. Advocate Shri Upadhye submitted that now there is no vacant post to accommodate the Complainant. In my Judgment, question of permanency was not subject matter of main complaint. The Complainant had put continuous service of more than 240 days and, therefore, was clearly entitled to protection under section 25-F of the Industrial Dispute Act. Those provisions are mandatory. Admittedly, those are not complied by the Zilla Parishad. Accordingly, I answer Point No. 1 in the affirmative.

12. Advocate Shri Upadhye, in the second phase, submitted that the Complainant may be awarded compensation in lieu of reinstatement. However, Advocate Shri Desai did not accept the same. It appears that the Complainant was working since the year 1980 till terminated on 26th September 1991. Thus, he has worked for a substantial period. Now, it will be difficult for him to secure fresh employment. He was of 32 years when presented the complaint *i. e.* in the year 1992. As such, now, he cannot secure fresh employment. In such circumstances, it will not be proper to award compensation in lieu of reinstatement.

13. Considering peculiar circumstances of the case, learned Labour Court has rightly granted 40% back wages. As such, order of reinstatement with continuity of service and 40% back wages warrants no interference. Accordingly, I answer Point No. 2 in the negative and pass the following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 18th October 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 748 OF 2001.—Shri Ashok Keshav Kadam, C/o. Shri N. G. Antarkar, Near Bahiri Temple, Chiplun, Dist. Ratnagiri.—*Complainant* —*Versus*—The Sub-Divisional Engineer, Minor Irrigation Sub-Division, At post Kapsal Colony, Chiplun, District Ratnagiri—*Respondent.*

In the matter of Complaint u/s. 28(*1*) read with item 9 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Appearances.– Shri A. M. Patwardhan, Advocate for the Complainant.

Shri S. R. Pisal, Asstt. Government Pleader for the Respondent.

Judgment

1. This is a Complaint u/s. 28(1) read with item 9 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act.

2. Admittedly, Government of Maharashtra made a Reference (IDA) No. 24 of 1993 to Labour Court, Kolhapur for adjudication of an industrial dispute between the Respondent and the Complainant. Learned Labour Court then passed an Award on 8th February 2001 that first party therein *i. e.* present Respondent shall reinstate second party therein *i. e.* present Complainant with continuity of service but without back wages. The Award is published on 28th May 2001.

3. This Complaint is filed on 1st August 2001 alleging that the Respondent has failed to implement the Award. It is alleged that the Complainant, time and against, requested the Respondent to implement the Award by reinstating him on previous post *i. e.* of watchman. However, the Respondent failed. Failure to implement Award passed by the Labour Court, is an unfair labour practice under item 9 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act. Finally, the Complainant has prayed for requisite declaration of an unfair labour practice and direction to implement the Award.

4. The Respondent has filed its written statement at Exh. C-5 *inter alia,* contending that he has sent requisite proposal to Government for further action. In addition, Writ Petition No. 6101/ 2001 is filed before the High Court challenging the Award. As such, the Award is not implemented and there is no unfair labour practice, as alleged.

5. I heard both sides. Considering rival submissions, following issues are framed by me at Exh. O-1 :—

(*i*) Does the Complainant prove that the Respondent failed to implement award passed in Industrial Dispute Act. Reference No. 24/93 by the Labour Court, Kolhapur ?

(*ii*) Does the Complainant prove that the Respondent has engaged in unfair labour practice under item 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act ?

(*iii*) What order ?

6. My findings on above issues, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) The Complaint is allowed.

Reasons

7. The Complainant has produced copy of the Award as well as notice publishing the same on notice-board of Labour Court, with list Exh. U-4. He then produced certified copy of order of Hon'ble High Court in Writ Petition No. 6101/2001, with list Exh. U-9. He filed pursis at Exh. U-10 stating that he does not wish to lead oral evidence. Similar pursis at Exh. C-6 is filed by the Respondent.

8. It has come on record that the Writ Petition filed by the Respondent challenging the Award passed by Labour Court, Kolhapur is dismissed on 10th April 2002. As such, the Respondent is well aware of the decision and ought to have implemented the Award in any case, after dismissal of the Writ Petition. But the same is not implemented for no justifiable reasons. The Respondent is under statutory obligation to implement the Award. Failure to implement the same is clearly an unfair labour practice under item 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. Accordingly, I answer issue Nos. 1 and 2 in the affirmative.

9. In the result, I pass following order.

Order

(*i*) The complaint is allowed.

(*ii*) It is decalred that the Respondent has engaged in unfair labour practice under item 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act.

(*iii*) The Respondent is directed to cease and desist from engaging in such unfair labour practice, forth with.

(*iv*) The Respondent is directed to forthwith reinstate the Complainant with continuity of service on his previous post of a watchman.

(*v*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 30th September 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE HON'BLE MEMBER INDUSTRIAL COURT MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 832 OF 2001.—Shri Netaji Dajiba Hodage, R/o. Harali, Gadhinglaj, Dist. Kolhapur.—*Complainant—Versus*—Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd., Harali, Gadhinglaj, Dist. Kolhapur, through its Managing Director.—*Respondent.*

In the matter of Complaint u/s. 28(*1*) read with items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

CORAM.— C. A. Jadhav, Member.

Appearances.—Shri R. V. Sirdesai, Advocate for the Complainant.

Shri D. N. Patil, Advocate for the Respondent.

Judgment

This is a Complaint u/s. 28(*1*) read with items 9 and 10 of Schedule IV of the M. R. T. U. and P. U. L. P. Act.

2. Admittedly, the Complainant is in employment of the Respondent-Sugar Factory as a Fitter, Grade-II from the year 1978.

3. It is case of the Complainant that he was prevented from joining the duties from 19th March 1998 till 31st December 1999 for no reason. Sugar Factory's administrator then allowed him to join duties on 1st January 2000. As such, he is entitled to wages for the period for which he was not allowed to join duties. It is further alleged that the Sugar Factory is contending that he was absent, however, no enquiry regarding his absenteeism is made. In fact, he was never absent. According to the Complainant, non payment of the wages for requisites period is an unfair labour practice. Finally, he has prayed for requisite declaration and reliefs.

4. The Sugar Factory filed its written statement at Exh. C-4 contending that the Complainant himself was absent without prior permission from 19th March 1998 onwards. The Time Keeper has accordingly submitted a report on 8th April 1998. Thereafter, a show cause notices dated 24th April 1998 and 30th May 1998 was served upon the Complainant. He admitted in the explanation dated 12th June 1998 that he was absent without prior permission. However, his explanation was unsatisfactory and, therefore, fresh notices dated 4th July 1998 and 11th September 1998 came to be served upon him but he neither gave any explanation nor joined the duties. He then joined duties on 1st January 2000. It is further pleaded that proper legal action would be taken against the Complainant and the Complainant is not entitled to wages as alleged by him. In fact, he was absent and hence question of preventing him from joining duties does not arise. Finally, the Sugar Factory has contended that it has not engaged in any unfair labour practice and prayed for dismissal of the complaint.

5. Considering rival pleadings, following issues framed by me at Exh. O-1 :—

(*i*) Does the Complainant prove that the Respondent did not allow him to join duties from 19th March 1998 till 1st January 2000 ?

(*ii*) Does the Complainant prove that findings of the Enquiry Officer that he was absent from 19th March 1998 to 20th September 1998, are perverse ?

(*iii*) Does the Complainant prove that the Respondent has engaged in unfair labour practice under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act ?

(*iv*) What order ?

6. My findings on above points, are as under :—

(*i*) It is proved that the Complainant was not allowed to join duties from 21st September 1998 till 31st December, 1999.

(*ii*) No.

(*iii*) Yes.

(*iv*) The Complaint is partly allowed.

Reasons

7. I must state that the Complainant was served with a chargesheet dated 7th August 2002 alleging absence without permission. The Enquiry Officer has held that the Complainant was absent without permission for the period 19th March 1998 to 20th September 1998 and charges of such absence for such period is proved. The Sugar Factory has produced report of the Enquiry Officer with list Exh. C-5.

8. The Complainant has filed his affidavit at Exh. U-8 whereas the Sugar Factory of its Labour Court at Exh. C-6. The Labour Officer has affirmed that enquiry report is accepted by the Sugar Factory. Both parties have filed a pursis Exh. CU-1 that they are admitting the findings of the Enquiry Officer and now do not wish to lead oral evidence. As such, the findings of the Enquiry Officer are binding on both parties.

9. It consequently follows that the Complainant was not allowed to join duties for the period 21st September 1998 to 31st December 1999. I answer Point No. 1 accordingly.

10. The Complainant has admitted report of the Enquiry Officer. As such, his plea that he was not allowed to join duties for the period 19th March 1998 to 20th September 1998 is contrary to the findings of the Enquiry Officer and must fail. Accordingly, I answer Point No. 2 in the negative.

11. In the background of above findings, I hold that the Sugar Factory did not allow the Complainant to join duties for the period 21st September 1998 till 31st December 1999 and non-payment of wages for such period, is an unfair labour practice. Accordingly, I answer Point No. 3 in the affirmative.

12. The Sugar Factory has prevented the Complainant from joining duties. As such, it is under statutory obligation to pay wages for requisites period of forced unemployment. Therefore, it shall pay wages to the Complainant for such period. I must make it clear that legality of proved misconduct and punishment thereof is not subject matter of this complaint. The Sugar Factory is at liberty to take appropriate action against the Complainant for the proved misconduct of absence. Non-payment of wages by preventing the Complainant to discharge duties is the only subject matter of this complaint.

13. Finally, I pass following order.

Order

(*i*) The complaint is partly allowed.

(*ii*) It is decalred that the Respondent has engaged in unfair labour practice under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

(*iii*) The Respondent is directed to cease and desist from engaging in such unfair labour practice, forthwith.

(*iv*) The Respondent is directed to pay wages to the Complainant for the period 21st September 1998 to 31st December 1999. Within one month from today.

(v) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 11th November 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

CRI. REVISION APPLICATION (ULP) No. 2 OF 2002.—Mr. Vijay Shankarrao Patil, Managing Director-Yeshwant Sahakari Sakhar Karkhana Ltd., Khanapur, At Post : Nagewadi, District Sangli.—*Petitioner*—*Versus*—Shri Dattatraya Dnyanu Shinde, At Post Khanapur, Tal. Khanapur, Dist. Sangli.—*Respondent.*

In the matter of Revision u/s. 44 of the M. R. T. U. and P. U. L. P. Act.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.—Shri D. N. Patil, Advocate for the Petitioner.

Smt. S. S. Mutalik, Advocate for the Respondent.

Judgement

(Dictated in open Court)

This is a Revision by original accused challenging legality of order passed in Criminal Revision (ULP) No. 1 of 2002 by Labour Court, Sangli, issuing process under Section 48(*1*) of the M.R.T.U. and P.U.L.P. Act against him.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) filed Complaint (ULP) No. 55/96 against present Petitioner (hereinafter referred to as the accused) underr the M.R.T.U. and P.U.L.P. Act. It was allowed directing the accused to reinstate the Complainant with continuity of service but without back wages. The accused challenged said order *vide* Revision Application (ULP) No. 213 of 2000 before this Court. The Complainant also challenged refusal to grant back wages *vide* Revision Application (ULP) No. 222/2000. Both Revision Application were dismissed on merits on 26th September 2001.

3. The Complainant then filed above Criminal Complaint alleging that the accused failed to comply order of Labour Court. It is alleged that the accused has intentionally dis-obeyed Labour Court's order and committed an offence punishable under section 48(*1*) of the M.R.T.U. and P.U.L.P. Act.

4. Learned Labour Court, on examining the Complainant on oath, passed an order on 23rd March 2002 of issuing process against the accused. The same is challenged in this Revision.

5. Now, following points arise for my determination :—

(*i*) Whether impugned order issuing process is required to be set aside at this stage ?

(*ii*) What order ?

6. My findings, on above points, are as under :—

(*i*) No.

(*ii*) The Revision Application is dismissed.

Reasons

7. Shri Patil, learned Advocate representing the accused submitted that decision of labour Court and this Court are challenged in the Hon'ble High Court and the matter is sub-judiced. The Complainant is well aware of such facts but suppressed. In such circumstances, it was improper for the Labour Court to issue process against the accused.

8. Section 40 of the M.R.T.U. and P.U.L.P. Act provides that a Labour Court shall have all powers under Criminal Procedure Code in respect of offences punishable under said Act. Consequently, the Petitioners-accused can apply for recalling order of issuing process. Hon'ble Apex Court in *K. Mathew* V/s. *State of Kerala reported in AIR 1992 S. C. at page 2206* has held that it is open to the accused to plead befoe the Magistrate for varying or recalling order of process. As such, learned Labour Court has jurisdiction to vary and recall an order of issuing process. The

Petitioner-accused can well approach the Labour Court and put all the grievances raised in this Revision, before the Labour Court. Consequently, no interference is called for at this stages. Accordingly, I answer Point No. 1 in the negative and pass following order :—

Order

(*i*) The Criminal Revision Application is dismissed.

(*ii*) R. and P. be sent to Labour Court, Sangli.

(*iii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 24th September 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

CRIMINAL REVISION APPLICATION (ULP) No. 3 OF 2002.—(1) The Managing Director, Shri S. D. Vavare, Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd., Walwa, Taluka Walwa, District Sangli, (2) Smt. N. M. Mali, Chairman, Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd., Walwa, Taluka Walwa, District Sangli.—*Petitioners*—*Versus*—Shri Dnyandeo Ragrao Patil, At Post Pundi, Tal. Palus, Dist. Sangli.—*Respondent.*

In the matter of Revision u/s. 44 of the M. R. T. U. and P. U. L. P. Act.

CORAM.—Shri C. A. Jadhav, Member.

Appearances.—Shri A. T. Upadhye, Advocate for the Petitioners.

Smt. S. S. Mutalik, Advocate for the Respondent.

Judgement

This is a Revision, by two officers of a Sugar Factory challenging legality of order passed on their application Exh. C-2 in Criminal Complaint (ULP) No. 6 of 2002 by Labour Court, Sangli, whereby the original Complainant is permitted to correct names of original accused by an amendment.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) filed Complaint (ULP) No. 780 of 2001 before this Court against the Managing Director of Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd. under the M.R.T.U. and P.U.L.P. Act wherein, interim order was passed directing the Managing Director to deposit amount of bonus payable to the Complainant, at par with other employees, on or before 30th November, 2001.

3. The Complainant then filed above Criminal Complaint against the Managing Director and the Chairman of Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd. by stating their names. Learned Labour Court on examining the Complainant, ordered to issue process against Accused Nos. 1 and 2. The Managing Director and the Chairman then made an Application at Exh. C-2 contending that the persons Accused Nos. 1 and 2 named in the complaint are not Managing Director and the Chairman of the Sugar Factory and hence the complaint be dismissed. The Complainant objected stating that the Managing Director and the Chairman have appeared in response to order of issuing process and the matter must proceed further. Learned Labour Court then observed that there is change in the name and surname only and that cannot be a good ground to discharge the accused. However, it then directed the Complainant to state correct names and carry out necessary amendment in name of the accused. Said order is challenged in this Revision.

4. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order directing the Complainant to amend names of he accused, passed on application filed by the aeccused is legal and proper ?

(*ii*) What order ?

5. My findings on above points, are as under :—

(*i*) No.

(*ii*) The Revision Application is partly allowed.

Reasons

6. Factual position stated hereinabove, is not disputed. The name and surname of the accused are different in original complaint.

7. Learned Advocate representing the Petitioner accused argued that there is no provision of amending the complaint under the Criminal Procedure Code. In addition, the Complainant did not file an application for amendment. As such, illegal relief granted in favour of the Complainant and that too on application of the accused is totally bad in law. The Labour Court, at the most would have rejected the application (Exh. C-2) but illegal relief is granted to the Complainant without any such prayer on his part as well as on application of other side.

8. Learned Advocate representing the Complainant replied that there are only clerical mistake in stating name and surname of the accused and the same is allowed to be rectified. Status of the accused is not disputed. Same person is going to attent the Court even after filing a fresh complaint by naming the accused properly. As such, no interference is warranted.

9. Section 40 of the M.R.T.U. and P.U.L.P. Act provides that a Labour Court shall have all the powers under the Criminal Procedure Code in respect of offence punishable under said Act. It is settled position of law that the Labour Court and the Industrial Court are creature of the statute and have only so much jurisdiction as is confirmed upon them thereunder. They cannot assume or user of jurisdiction which does not directly flow from the statute under which they function.

10. Now, resorting to provisions of Criminal Procedure Code, section 4 thereof says that all offences under any other law shall be investigated, enquired into, tried and otherwise dealth with, according to provisions contained therein but subject to any other enactment. Admittedly, names of the Managing Director and the Chairman are not same as stated in original Criminal Complaint. Complainant's Advocate was unable to point out any provision under the Criminal Procedure Code or any other law whereby names of the accused can be amended or corrected and that too on application of the accused itself. Advocate for the Petitioners rightly submitted that the Labour Court, at the most, would have rejected Application (Exh. C-2) of the accused. In my Judgment, therefore, granting relief to the Complainant on application of the accused has no legal sanction. Eventually, impugned order is contrary to provisions of law and is required to be set-aside. Accordingly, I answer Point No. 1 in the negative. However, the Complainant is at liberty to take appropriate legal action.

11. As regards Application (Exh. C-2) of the accused to dismiss the complaint, the same needs to be decided after exercise of the proper remedy by the Complainant. As such, the Labour Court is directed to decide said application thereafter.

12. In the result, I pass following order :—

Order

(*i*) The Revision Application is partly allowed.

(*ii*) Impugned order directed the Complainant to amend names of the accused is set aside.

(*iii*) The Labour Court is directed to decide the Application (Exh. C-2) afresh after exercising proper remedy by the Complainant or extending an opportunity to the Complainant.

(*iv*) R. and P. be sent to Labour Court, Sangli forthwith.

(*v*) The parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 3rd October 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE JUDGE, EMPLOYEES' INSURANCE COURT, MAHARASHTRA AT KOLHAPUR

APPLICATION (ESI) No. 9 OF 2002.—The Ichalkaranji Textile Pvt. Ltd., Plot No. 147, 148 CII Parvati Co-op. Industrial Estate, Yadrav, Tal. Shirol, Dist. Kolhapur, through its Director Mr. Santosh J. Patil.—*Applicant—Versus*—(1) The Regional Director, Employees' State Insurance Corporation, Panchadeep Bhavan, Bibewadi, Pune, (2) The Recovery Officer, Employees' State Insurance Corporation, Pune—*Opponents.*

In the matter of Application u/s. 75,77 and 78 of the E.S.I. Act.

CORAM.— Shri C. A. Jadhav, Judge.

Appearances.—Shri T. B. Vaze, Advocate for the Applicant.

Shri S. V. Kotnis, Advocate for the Opponents.

Judgement

This is an application under section 77 read with 75 of the Employees' State Insurance Act claiming declaration that the Applicant is not liable to pay the contribution and interest and to set-aside action of Recovery.

2. Admittedly, the Applicant Company is covered under provisions of the Employees State Insurance Act having code No, 33-11418/19. It paid contribution of Rs. 41,648 from time to time. It is also an admitted position that the Corporation passed impugned orders under section 45-A of the E. S. I. Act claiming contribution from the Applicant on *ad-hoc* basis. It then directed its Recovery Officer to recover the contribution from the Applicant.

3. It is case of the Applicant that no proper opportunity of being heard was given while passing impugned orders under section 45-A of the ESI Act. In addition, those orders are made without application of mind and are not speaking one. In fact, the Applicant has paid the contribution on actual basis and is further willing to permit its record to be verified by Corporation's Director or Inspector. It is then alleged that the order determining contribution on *ad-hoc* basis is erroneous and bad in law. It is further contended that the amounts claimed by the Corporation are not legally due from the Applicant and, therefore, question of paying interest thereof, does not arise. On these averments, the Applicant has claimed requisite reliefs.

4. The Corporation filed its written statement at Exh. 7 and traversed all material allegations made by the Applicant. It contended, at the outset that the Applicant has not deposited 50% of the amount claimed as provided under section 75(*2B*) of the ESI Act. Therefore, the application is liable to be dismissed, on this count itself. It is then contended that the Applicant is liable to pay contribution and interest thereof amounting to Rs. 85,914. The Applicant was directed to attend the personal hearing on 20th February 2002 but did not attend and failed to produce the record to show that the contribution is made on actual basis. Consequently, the Corporation had no alternate to determine the contribution on its own and question of deputing Insurance Inspector for verification of the record, does not arise. It is then contended that the Applicant failed to file any statement giving full particulars of the contribution actually due, as per his own record. Contributions determined as per section 45-A of the E.S.I. Act are therefore, correct and impugned orders are speaking one. The Applicant is covered with effect from 1st April 1999 and coverage intimation was sent on 1st October 2001. But no contributions were paid till January 2002. Eventually, a show cause notice was given to the Applicant but no reply thereof was filed. As such, allegations that no opportunity of being heard was extended to the Applicant, are false and baseless. It is then explained that the Applicant has paid contribution of Rs. 11,184 after receipt of order dated 14th March 2002 under section 45-A of the E.S.I. Act. As such, plea of willingness to verify the record at the belated stage, cannot be entertained. According to the Corporation, therefore, request to the Recovery Officer to recover the amount of contribution and interest is legal one. Finally, the Corporation has justified its action and prayed for dismissal of the application.

5. Considering rival pleadings, following points, arise for my determination :—

(*i*) Whether fresh hearing and opportunity of being heard needs to be extended to the Applicant, in the interest of justice ?

(*ii*) What order ?

6. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Application is partly allowed.

Reasons

7. The factual position arise out of the pleadings, is no longer in dispute. The Applicant has produced impugned orders passed under section 45-A of the E.S.I. Act, notices issued by the Recovery Officer and copies of challans depositing the contribution, with list Exh. 5. None of the parties have led oral evidence. Impugned orders say that the Applicant neither replied the notice nor raised objection before the Director on 20th February 2002, despite issuance of show cause notice. Thus, it is clear that the Applicant did not attend personal hearing and impugned orders were passed thereafter.

8. Shri Vaze, Learned Advocate representing the Applicant submitted that the Applicant has paid contributions from time to time, according to its own calculations. Unfortunately, the Applicant could not attend personal hearing. However, he can very well show on production of requisite papers by the Corporation, as to how the assessment is incorrect. He submitted that the Corporation assesses contribution on the items or expenditure on which it is not entitled to assess the contribution. He further submitted that extension of fresh opportunity to the Applicant will not be prejudical to the Corporation, in any manner. He then submitted that the Applicant is not defaulter but there is a legitimate dispute regarding assessment of the contribution. Finally, he submitted that the Applicant is willing to furnish bank-guarantee for the disputed arrears and the Corporation be directed to give an opportunity to the Applicant.

9. Shri Kotnis, Learned Advocate representing the Corporation countered above arguments and replied that the Applicant cannot blame the Corporation for his own default. The Applicant failed to attend hearing on 20th February 2002 despite a show cause notice and then the Corporation has assessed/determined the contribution on its own. As such, the Corporation cannot be faulted. He further submitted that, in case this Court is going to direct a fresh hearing, the Applicant be directed to deposit entire due amount. He relied on the decision of Calcutta High Court in *Raj-Rani Export Ltd.* V/s. *E. S. I. Corporation and Others reported in 2002 (92) FLR at page 798.*

10. Impugned orders are passed as the Applicant failed to appear. It is always better to decide controversy on merits. The Corporation has not produced its record to show as to how the amounts stated in impugned orders, are determined. It will be better to give fresh opportunity to the applicant to put his case and then to pass a fresh order under section 45-A of the ESI Act. Such mode will not be prejudicial to the Applicant. Simultaneously, direction to the Applicant to deposit disputed deficit amount under protest with the Corporation, will meet the ends of justice. Accordingly, I answer Point No. 1 in the affirmative and pass following order :—

Order

(*i*) The Application is partly allowed.

(*ii*) The Applicant is directed to deposit disputed balance amount of Rs. 44,216 (Rs. Forty four thousands, two hundred sixteen only) within a period of 15 days, with E.S.I. Corporation, without prejudice to its rights and contentions and subject to determination of the case afresh.

(*iii*) The Corporation is directed to determine or re-assess or re-calculate the amount, after giving opportunity to the Applicant in accordance with provisions U/s. 45-A(*1*) of the E.S.I. Act, within a period of 3 months from the date of deposit of the disputed balance amount.

(*iv*) On failure of the Applicant, the Corporation shall not be bound to give an opportunity to the Applicant.

(*v*) Impugned orders U/s. 45-A of the ESI Act are kept in abeyance as above, till re-determination, re-assessment or re-calculation.

(*vi*) Parties shall bear their own costs.

C. A. JADHAV,
Judge,
Employees' Insurance Court, Kolhapur.

Kolhapur,
Dated the 26th August, 2003.

Signed .....
Assistant Registrar,
Industrial Court, Kolhapur.

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